



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/170935

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner's wife FoodShare benefits, effective December 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's wife was born in Israel, but in 1999, at the age of five, she immigrated to the United States with her parents and entered the United States under a visa. She has lived in the United States since that time. (Testimony of Petitioner; Exhibits 3 and 4)

3. The Petitioner and his wife were married in 2013. As of October 9, 2013, the United States issued the Petitioner's wife a permanent resident card. She has not yet become a U.S. citizen. (Testimony of Petitioner; Exhibit 6)
4. On November 20, 2015, the Petitioner or his wife contacted the agency to report the birth of their third child. (Exhibit 7, pg. 3)
5. On November 25, 2015, the agency sent the Petitioner a notice indicating that effective December 1, 2015, the household's FoodShare benefit would increase from \$143 per month to \$285 per month, but that his wife would not be receiving FoodShare benefits, because she is not a qualified alien. (Exhibit 7, pgs. 14-20)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 22, 2015. (Exhibit 1)
7. Including Petitioner's wife, Petitioner's family includes five people. (Testimony of Petitioner; Exhibit 7, pgs. 14-20)

DISCUSSION

The Petitioner filed an appeal because his wife was denied FoodShare benefits.

A non-citizen who holds what is commonly referred to as a “green card” (a.k.a. permanent resident card) is considered Lawfully Admitted for Permanent Residence (LPR). *See page 1, SNAP: Guidance on Non-Citizen Eligibility*¹

In order for an individual who is LPR to be eligible for FoodShare benefits, the individual must meet **one** of the following conditions:

1. Five years of residence as an LPR,
2. 40 qualifying work quarters,²
3. Be a child under 18,
4. Be blind or disabled and receiving benefits or assistance for the condition,
5. Be Elderly, meaning a person born on or before 8-22-31 who legally resided in the U.S. on 8-22-96, **or**
6. Have a military connection, i.e. on active duty (excluding National Guard), a veteran, is honorably discharged, but not due to immigration status, or a surviving spouse of a veteran.

See page 2, SNAP: Guidance on Non-Citizen Eligibility; See also FoodShare Wisconsin Handbook (FSH §3.12.1.1

The Petitioner's wife received her permanent resident card in October 2013. While the Petitioner's wife has not accumulated five years of residence as an LPR, it is entirely possible that she has accumulated 40 work quarters.

3.12.1.3 Work Quarter Eligibility

Legal permanent resident non-citizens who have worked for 40 qualifying quarters are eligible. There is no time limit on this category of eligibility.

¹ http://www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf Petitioner might also wish to look at: <http://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility>

² See also 8 U.S.C. §1612(1)-(3) of the Personal Responsibility and Work Opportunity Reconciliation Act, which creates an exception specific only to the food stamp program and SSI (Supplemental Security Income) program for qualified aliens who have accumulated 40 work quarters.

1. One worked by a parent of a non-citizen before the alien reached his/her eighteenth birthday, including those quarters worked before the non-citizen was born;
2. One worked by a spouse of an non-citizen during their marriage if the non-citizen remains married to the spouse or the spouse is deceased.

Each person in the applying household is considered an applicant. Therefore, each spouse can claim the quarters of the other spouse, and the children can claim the quarters worked by their parents. An individual can only earn four quarters per year. If both spouses worked in the same quarter, this would count as one quarter – an individual cannot earn two quarters in the same quarter.

Count both qualifying quarters of work covered by Title II of the Social Security Act, and qualifying quarters of work not covered by Title II. Beginning 1/1/97, a quarter in which the alien received Federal means-tested assistance is not counted as a qualifying quarter

FSH §3.12.1.3

Work quarters are counted regardless of immigration status, and a person can count the work quarters of a spouse. A person may also count the work quarters of a parent, before the person turned 18 years old. *See page 15 SNAP: Guidance on Non-Citizen Eligibility; See also FSH §3.12.1.3*

If Petitioner's parents have worked consistently since they immigrated to the U.S. on a work visa, then Petitioner should have met the 40 work quarters by the time she turned 15 in 2009 and certainly by the time she turned 18 in 2012.

It is found that the agency has not met its burden to show that it correctly denied FoodShare benefits for Petitioner's wife. This matter will be remanded to the agency for verification of the work quarters accumulated by Petitioner's wife, by either working on her own, through her parents or through her husband.

3.12.1.3.1 Disclosure of Work Quarter Information

The local agency may request information from the SSA about work history for non-covered employment as well as covered employment.

If you are unable to determine work quarters through the SSA automated system, you may accept the applicant's sworn statement of sufficient work, pending verification, provided the applicant has been in the country sufficient time to earn the quarters (totaling the time from the employed applicant and parent and spouse).

The SSA is authorized to release work quarter information on a non-citizens, a non-citizen's parents or spouse to a county/tribal agency (not applicant) for the purpose of determining eligibility, even if the parent or spouse cannot be located or refuses to sign a release statement.

You may also find work quarter information through CARES data exchange screens. To verify non-citizen's work quarters information you can request it in CARES on DXQR. It will be available on DXQC 48 hrs later.

FSH §3.12.1.3.1; See also page 14 SNAP: Guidance on Non-Citizen Eligibility

“If work quarters cannot be verified through SSA, they can be verified through other means, such as wage stubs, tax returns, or statements from employers.” *page 14 SNAP: Guidance on Non-Citizen Eligibility*

Once the agency has verified the number of qualified work quarters accumulated by Petitioner’s wife, it will have to re-determine the eligibility of Petitioner’s wife. If Petitioner or his wife disagree with the new determination, they will have to file a NEW appeal.

CONCLUSIONS OF LAW

The agency did not correctly deny the Petitioner’s wife FoodShare benefits, effective December 1, 2015.

THEREFORE, it is

ORDERED

That the agency verify the number of qualified work quarters the Petitioner’s wife accumulated on her own, through her parents before she turned 18, and through her husband. The agency shall then re-determine the eligibility of Petitioner’s wife and issue to Petitioner / his wife a new notice of decision. The agency shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

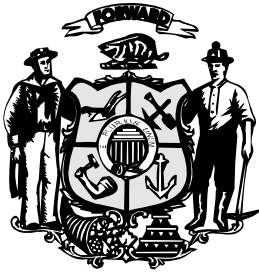
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of February, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability